THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

W.P.No. 23166 of 2004

-

% 26.04.2005.

M/s. Kishan Chand Foundation Trust rep.by its Chairman –Mahesh Chand.

.....Petitioner

Vs.

$ 1.The District Collector, Hyderabad District and 2 others

.....Respondent

Counsel for the Petitioner: Mr. A. Narasimha Reddy

Counsel for the Respondents: G.P. for Revenue

<Gist:

>Head Note:

? Cases referred:

1. AIR 1982 SC 1081
2. AIR 1960 A.P.134

3. 2001 (3) ALT 200

4. 2002 (1) AN.W.R. 131 (D.B.) (A.P.)

5. AIR 1985 SC 218

6. AIR 1986 SC 468

7. 2004 (6) ALD 708

8. 2004 (2) ALD 837

9. 2004 (2) ALD 139

10. 2005 (2) ALT 365

11. 1984 (1) APLJ 219

12. 1988 (1) ALT 716

13. AIR 1989 SC 997

14. 2003 (3) ALD 2

15. 2003 (5) ALD 421

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 23001 of 2004

and

W.P.M.P.No.9726 of 2005

Between:

M/s.Kishan Chand Foundation Trust, H.No.3-6-292, rep by its Chairman Mahesh Chand, S/o late Prof. Kishan Chand, aged about 76 years, Occ: Business, R/o 3-6-161, Hyderguda, Hyderabad.

..... PETITIONER in W.P. and W.P.M.P.

AND

1 The District Collector, Hyderabad Dist.
2 The Revenue Divisional Officer, Hyderabad.
3 Mandal Revenue Officer, Himayathnagar Mandal, Hyderabad.

.....RESPONDENTS in W.P. and W.P.M.P.

Writ Petition filed under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in seeking to dispossess the petitioner from premises bearing No.3-6-292 (admeasuring 5,641 Sq.Yards) situated at Himayathnagar, Hyderabad, as arbitrary, illegal and violative of principles natural justice and further declare the action of the respondents in seeking to dispossess petitioner as contrary to secs.5&6 of A.P. Land Encroachment Act, 1905, and pass such other order or orders.

W.P.M.P.No.9726 of 2005:

W.P.M.P.is filed under Section 151 of C.P.C. to permit the petitioner to substitute and amend the Main prayer in W.P.No.23001 of 2004 as under.

"Therefore in the circumstances sated above, it is prayed tha this Hon'ble Court may be pleased to issue a writ, Order or Direction more particularly one in the nature of Writ of Mandamus.

i. declaring the action of the respondents in seeking to dispossess the petitioner from premises bearing No.3-6-292 (admeasuring 5,641 Sq.yards) situated at Himayathnagar, Hyderabad, as arbitrary, illegal and violative of principles of natural justice and further declare the action of the respondents in seeking to dispossess petitioner as contrary to Sec.5&6 of A.P. Encroachment Act, 1905.

ii. declaring the action of the 3rd respondent in passing the impugned proceedings No.A/2578/1997 Dt:20-11-2004 as arbitrary, illegal, contrary to the provisions of Land Encroachment Act and violative of Article 14 and 21 of the Constitution of India, consequently set aside the same.

Counsel for the Petitioner: MR.A.NARASIMHA REDDY in W.P. and W.P.M.P.

Counsel for the Respondents: GP FOR REVENUE in W.P. and W.P.M.P.

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.23001 of 2004

and

W.P.M.P.No.9726 of 2005

ORDER:

Questioning the notice dated 26-06-1997 issued by the Mandal Revenue Officer, Himayatnagar (3rd respondent), under Section 7 of the A.P. Land Encroachment Act, 1905 (the Act), to show cause as to why it should not be evicted from 4678 Sq. Mts. in TS No.19 at Gaganmahal belonging to Government, petitioner, which is a Trust, filed this petition. During the course of hearing, petitioner filed W.P.M.P.No.9726 of 2005 seeking leave of the Court to amend the prayer in the writ petition as, to declare that the order of the third respondent in his Proceedings No.A/2578/1997 dated 20-11-2004 is illegal, arbitrary and contrary to the provisions of the Act and violative of Article 14 of the Constitution of India and for the consequential reliefs.

2. The case, in brief, of the petitioner is that the property bearing No.3-6-292 admeasuring 5,461 Sq. yards at Himayathnagar hereinafter referred to as the 'suit land' was purchased by its Trustees in 1968 under two registered sale deeds, and that it and its predecessors-in-title have been in peaceful possession and enjoyment thereof from several decades prior to 1997. When 3rd respondent served a notice under Section 7 of the Act in respect of the suit land, it, after submitting an explanation to the 3rd respondent, filed O.S.No.2364 of 1997 questioning that notice. After the said suit was dismissed after trial it preferred an appeal in A.S.No.387 of 2001 to the Court of the Chief Judge, City Civil Court, Hyderabad. After the said appeal was dismissed for default, it was told that it ought not to have filed a suit questioning the notice under Section 7 of the Act and was advised to file the writ petition questioning the notice under Section 7 of the Act in view of its title and long standing possession over the suit land, which is located in the middle of the city, in view of the ratio in **GOVERNMENT OF ANDHRA PRADESH v. THUMMALA KRISHNA RAO**. Since the factum of the 3rd respondent passing an order under Section 6 of the Act in proceedings No.A/2578/1997 dated 20-11-2004 (copy of

which was not filed along with the counter affidavit of the 3rd respondent) came to its notice only after the Government Pleader served the compilation of material papers during the course of hearing, it was not aware that an order under Section 6 of the Act was in fact passed when it filed the writ petition, and so it did not question that order in the writ petition and since it came to know that there is an order under Section 6 of the Act which was passed without affording an opportunity of being heard to it, it filed the petition for amendment of the prayer in the petition as the one to set aside the order under Section 6 of the Act.

3. Third respondent filed his counter affidavit and additional affidavit on behalf of respondents. The case, in brief, of the respondents is that the suit land is classified as 'G.Abadi' and as such belongs to the Government, and so, petitioner or its predecessors can have no right or interest over the suit land. As the petitioner encroached on to the suit land illegally, notice under Section 7 of the Act dated 26-06-1997 was served on it, calling for its explanation. Petitioner, having submitted its explanation, filed a suit in the City Civil Court seeking a decree of perpetual injunction restraining its eviction by respondents. After dismissal of the suit and the appeal preferred by it, proceedings under Section 6 of the Act were issued on 20-11-2004 and were served on the petitioner through affixture. Since the petitioner failed to handover possession, possession of the suit land was taken over under a panchanama on 23-11-2004 and so the petition is liable to be dismissed.

4. The contention of Sri P.Prakash Reddy, learned senior counsel for the petitioner, is that since the suit land, which is enclosed by a compound wall, was purchased way back in 1968 under two registered sale deeds dated 22.07.1968 and since the other documents produced by the petitioner disclose that the suit land has been in possession of the predecessors-in-title of the petitioner from 2nd Farwardy 1354 Fasli i.e. more than 50 years prior to 1997, issuance of notice under Section 7 of the Act, when Government is claiming title thereto only on the basis of the entries in T.S.L.R., which do not per se confer title, is unsustainable. It is his contention that since the petitioner, in its reply to the notice under Section 7 of the Act issued by the third respondent, clearly asserted its title to the suit land, third respondent before passing the order under Section 6 of the Act should have considered the objections

dispassionately and afforded an opportunity of being heard to the petitioner, and contended that since petitioner raised a bona fide dispute relating to title, respondents taking recourse to summary proceedings under the Act is improper as held in **THUMMALA KRISHNA RAO** case (1 supra). He also relied on **RAVIPUDI ABBAYYA v. STATE OF A.P.** and **HYDERABAD POTTERIES PVT. LTD. v. COLLECTOR, HYDERABAD DISTRICT** and contented that **HYDERABAD POTTERIES PVT. LTD** case (3 supra) was affirmed by a Division Bench of this Court in appeal and the Supreme Court dismissed the Special Leave Petition. He also relied on **SOGRA BEGUM v. STATE OF A.P.** in support of his contention that entries in T.S.L.R. are not conclusive proof of title. His next contention is that since the order dated 20-11-2004 passed by 3rd respondent under Section 6 of the Act shows that the petitioner was given three days time to deliver possession of the property, respondents' alleged taking over possession of the suit land on 23-11-2004, even before the expiry of 3 days, is a make believe affair, as the various documents like telephone and electricity bills etc. produced by the petitioner clearly show that petitioner is still in possession of the suit land. It is also his contention that since the order dated 20.11.2004 of the third respondent passed under Section 6 of the Act refers to a communication in Lr.No.B5/5522/1997 dated 19.11.2004 from the Collector, Hyderabad District, and since a copy of those proceedings is not served on the petitioner, petitioner is not aware of its contents, and contends that if the order of the third respondent is based on the instructions received from the Collector, the same would be an invalid order and so the petitioner may be permitted to amend the prayer in the main petition and the order allegedly passed under Section 6 of the Act may be set aside.

5. The learned Government Pleader raised four contentions viz., (a) petitioner is guilty of suppression of an important fact of his filing a petition for restoration of A.S.No.387 of 2001, (b) its continuing the proceedings in the Civil Court even after filing this petition is but an abuse of process of Court, (c) its rushing to this Court, without availing the remedy of appeal under Section 10 of the Act, disentitles its claiming any relief, and (d) granting the relief sought in the petition tantamounts to declaring the title of the petitioner to the suit land. It is his contention that since petitioner is disputing the title of the Government, it is for the petitioner to file a suit

for declaration of its title and recover possession of the suit land from the Government and it is not necessary for the Government to file a suit for recovery of possession, because it was already taken possession of from the petitioner on 23.11.2004 under a panchanama. It is his contention that the ratio in **THUMMALA KRISHNA RAO** case (1 supra) does not apply to the facts of this case, as in that case there was a doubt whether the three plots of land, claimed by Thummala Krishna Rao, who purchased them from Nawab Habibuddin were the subject matter of the acquisition proceedings initiated by the Government of Hyderabad for the benefit of Osmania University, and whether Osmania University, had lost its title by operation of the law of limitation, as the suit filed by it i.e. Osmania University was dismissed on the ground of limitation i.e., on the ground that Nawab Habibuddin was found to have encroached on the said property more than 12 years before the date of the suit, and since Osmania university, after having lost the suit, activated the Government to evict the Nawab Habibuddin and his transferees summarily. Relying on **AMAR NATH OM PRAKASH v. STATE OF PUNJAB** he contended that the observations in **THUMMALA KRISHNA RAO** case (1 supra) relied on by the learned senior counsel for the petitioner must be read in the context in which they appear, and that decision cannot be treated as a statute. He also relied on the following observations in **PRAKASH AMICHAND SHAH Vs. STATE OF GUJARAT**.

> "Before embarking upon the examination of these decisions we should bear in mind that what is under consideration is not a 'statute or a legislation' but a decision of the Court. A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation."

It is his contention that the conduct of the petitioner in filing O.S.No.2364 of 1997 on 07-07-1997, immediately after giving its explanation on 03-07-1997, and its filing an appeal in A.S.No.387 of 2001 against the decree of dismissal of the suit, and allowing the same to be dismissed for default, and filing this petition, on 10.12.2004 suppressing the order dated 20-11-2004 passed under Section 6 of the Act by the 3rd respondent and the 3rd respondent taking over possession as long back as on 23.10.2004 and its failure to disclose its filing a petition to restore A.S.No.387 of

2001 show that petitioner is trying to sail on two boats, and contended that these facts establish the mala fides on the part of the petitioner. It is his contention that on the basis of the telephone bills and electricity bills, possession of a person cannot be determined because it is well known that even after the change of ownership or change of tenant, telephone bills and the electricity bills would be sent in the old name and address for a considerably long period. He relied on **MAHAVIR PERSHAD v. COLLECTOR, HYDERABAD DISTRICT** and **S.LINGAMAIAH v. STATE OF A.P.** in support of his contention that this petition, without availing the remedy of appeal, is not maintainable. Relying on **KARAKA CHINA RAMAYAMMA v. STATE GOVERNMENT OF A.P.** he contended that the remedy of the petitioner, if any, is to file a suit for declaration of his title and seek recovery of possession, as final notification under Section 7 of the A.P. Survey and Boundaries Act, 1923, was published in A.P. Gazette dated 22-04-1976 in respect of the survey conducted between 1965 to 1974, and since that notification became final as it was not challenged within 3 years. It is his contention that since question of title of the petitioner cannot be decided in a writ petition as held in **MEHERNOSH H. CHENOY v. STATE OF A.P.**, the petition is liable to be dismissed.

6. The learned Government Pleader produced the file relating to the case for my perusal on my direction.

7. The material documents produced by the petitioner along with the writ petition show that Mahesh Chand, Mrs. R.D.Chand, Naresh Chand and Ramesh Chand, sons and wife of late Professor Kishan chand, who are the trustees of the petitioner-Trust, had purchased two open plots of 2604 Sq. Mts each, equivalent to 2821 Sq. yards each, under two registered sale deeds dated 22.07.1968 and that those documents were registered on 24.07.1968 as document Nos.2183 and 2184 of 1968 and that on 27-12-1970, the vendees i.e. Mrs.R.D.Chand, Mahesh Chand, Naresh Chand and Ramesh Chand made an application to the Endowments Department for registration of a charitable endowment known as ‘Kishen Chand Foundation’ (petitioner) endowing open plot of land bearing No.3-6-292, Hyderguda, Hyderabad (suit land), acquired by them under the aforesaid registered document Nos.2183 and 2184 of 1968 dated 22.07.1968, as the trust property. By the proceedings in P.A.C.No.2/71 dated 19-01-1971 the Assistant Commissioner, Endowments

Department (Twin Cities) had registered Sri Kishan Chand Foundation Trust, Hyderguda, Hyderabad (the petitioner), and the properties shown in the application filed by Mrs. R.D.Chand, Chairman of the Trust, under Section 3(4) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, and that petitioner-Trust obtained exemption under Section 80G of the Income Tax Act, and paid tax to Municipality on 25-08-1982 in respect of the suit land. A copy of the registered trust deed dated 10-03-1969 of the petitioner and copies of the registered sale deeds of the predecessors-in-title of the petitioner are also filed as material papers by the petitioner.

8. Copies of the registered documents produced by the petitioner prima facie show that petitioner and its predecessors-in-title have been in possession of the suit land, which is enclosed by a compound wall, in an important locality in the city, from over 50 years prior to 1997. Except the notice under Section 7 of the Act and the Gazette of 22-04-1976 respondents did not produce any other document to show that they asserted their title to the suit land by issuing any notice either to the petitioner or to its predecessors-in-title under the Act prior to 1997 or to show that either the petitioner or any of its predecessors-in-title ever admitted the title of the Government to the suit land.

9. A Division Bench of this Court in **SPECIAL DY.COLLECTOR v. K.L.BAPUJI** while considering the purport of the ratio in **THUMMALA KRISHNA RAO** case (1 supra), relied on by the learned counsel for the petitioner, observed as follows in para-2.

> "Justice Chinnappa Reddy (as he then was) by a judgment, following an earlier judgment of this Court in Meharunnissa Begum v. State of Andhra Pradesh 1970 (1) A.L.T. 88 in which a Division Bench of this Court affirmed the view taken by the learned single judge, held that the statute enables the Collectors or the Tahsildars to take action under the Act only in cases where the occupation is recent or where the occupant by some action of his indicated that he admits his occupation to be unauthorized. The view taken by this Court in Meharunnissa Begum vs State of Andhra Pradesh (cited supra) was approved by the Supreme Court in Govt. of A P vs T Krishna Rao AIR 1982 SC 1081. The Supreme Court has laid down that "if there is a bona fide dispute regarding the title of the Government to any property., the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Sec.6 for evicting the person who is in possession of the property under a bona fide claim or title". The court further held that the summary remedy prescribed by Sec. 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title, That procedure is, therefore, not the due process of law for evicting the alleged trespassers. The court further observed: **"It is not the**

> **duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bonafide. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law"**. Giving examples of property in respect of which summary proceedings under Sec. 6 and 7 of the Act could be taken, **their Lordships pointed out that "a person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is unauthorized occupation of property which is declared by Sec.2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act**". (emphasis supplied)

A learned single Judge of this Court in **SHIVALINGAPPA v. STATE OF A.P.** while considering the right of the Government to invoke the provisions of the Act against a person in long standing possession of government property, held as follows at page 718.

> "Some cases say that the occupation should be of recent origin for allowing this Act to be put into force. I cannot agree. If the Act were to be applied it cannot be given this meaning to this Act. In my opinion this Court cannot legally speaking restrain the Government from applying this Act on the ground that the encroacher has been there for a long period of time. **Long occupation which is not ripened into adverse possession cannot be a ground to refuse enforcement**. Time is not in those circumstances capable of creating a *bonafide* dispute or title." (emphasis supplied)

10. As stated earlier, copies of the registered documents produced by the petitioner show that petitioner and its predecessors-in-title are in occupation of the suit land for more than 50 years openly and in their own right, by enclosing it with a compound wall, and that the suit land also was registered as trust property, by the Endowments Department way back in 1971. It is well known that third parties can acquire title, even to government property, by being in adverse possession for over 30 years. While sending a reply to the notice issued to it under Section 7 of the Act by the 3rd respondent, petitioner enclosed copies of the sale deeds dated 22-07-1968, judgment copy in O.S.No.14 of 1962 dated
24-12-1967 referred to in those sale deeds, a copy of the deed of trust, communication received from the Special Officer, Municipal Corporation of Hyderabad, Town Planning Section, in File No.292/6/3/8286/ 1069 dated 31-07-

1986, asking it to pay Rs.42,115/- for processing its application. After receiving that reply with enclosures, the following note was put up before the 3rd respondent, as seen from the file produced by the learned Government Pleader.

> "Submitted
>
> Kindly see the reference 2nd cited wherein Sri Mahesh Chand filed a document which can be seen Flag (A), (B) and (C) and other relevant documents also filed.
>
> In this regard the file may be referred to L.G. Court.
>
> S.T.O.
>
> Sd/-
>
> 10.07.97
>
> Yes. Today itself
>
> Go & meet G.P.Shariff
>
> Sd/- xxx-23.7.97"

So, it is prima facie clear that the first reaction of the 3rd respondent, after receiving the reply from the petitioner was to proceed against the petitioner under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982.

11. Petitioner filing O.S.No.2364 of 1997 seeking an injunction, from eviction from the suit land, is not and cannot be a bar for the 3rd respondent initiating proceedings against the petitioner under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982, for recovery of the suit land as contemplated by him in the above noting. But, no proceedings, admittedly, were initiated under the Land Grabbing (Prohibition) Act, 1982, seeking eviction of the petitioner from the suit land.

12. After 3rd respondent received a copy of the judgment in A.S.No.387 of 2001, he made the following endorsement on 19.11.2004 on the copy of the judgment while marking it to the Deputy M.R.O.

> "Pl. verify in Collectorate any further orders if any passing on this subject matter and report immediately."

The notings in page 11 of the file produced by the learned Government Pleader reads as follows-

"Ref:-Collector's Lr.No.B5/5522/97, Dt.19.11.04

43) As Per NF Para 42 I had been to the Collectorate B5-Section Asst. and received the letter cited at reference.

44) Kindly peruse the reference cited, wherein it is requested to take over possession of the suit schedule land immediately and report compliance.

45) Submitted for Orders please.

Sd/-xxx-20.11.2004

Sr. Asst. (OD)

46) Deputy MRO – Please put up Notice under Section 6 to that party to delivery the possession of the land.

Sd/-xxx- 20/xi/2004

M.R.O.

Submitted Sir,

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47) As per the endorsement of M.R.O. at NF para 46, Notice prepared and submitted below for kind approval.

Sd/-xxx 20.11.04

D.T. Approved.

Sd/- xxx 20.XI.04

M.R.O."

Letter No.B5/5522/97 dated 19-11-2004 addressed to 3rd respondent by the first respondent mentioned in the note at page 11 of the file extracted above reads –

"Sub:- Suits –A.S.No.387/2001 filed Kishan Chand Trust

represented by its Chairman Trust Maheshchand-

dismissed for default taking over possession-Reg.

Ref:- Chief Judge City Civil Court Hyderabad

A.S.No.387/2001 dated 29-8-2002.

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I invite your attention to the reference cited and inform that A.S.No.387/2001 dt.29-08-2002 was dismissed for default.

Therefore, the Mandal Revenue Officer Himayathnagar is requested to take over Possession of the suit schedule land immediately and report compliance as per orders of the Hon'ble Chief Judge City Civil Court Hyderabad in A.S.No.387/2001 dated 29-8-2002.

Yours faithfully,

Sd/- xxxx 19/11

For Collector,

Hyderabad Dist."

13. So, it is clear from the above noting in the file that order dated 20-11-2004 under Section 6 of the Act impugned by the petitioner was not in fact prepared by the third respondent, but was prepared by the Deputy Mandal Revenue Officer, and was placed before the third respondent who just approved it, even without affording an opportunity of being heard to the petitioner, though as per Section 6 of the Act he is under an obligation to hold a summary enquiry before passing an order directing eviction. The documents relied on by the petitioner, enclosed to the explanation sent to the notice under Section 7 of the Act, were not even considered or referred to in the order passed under Section 6 of the Act. The D.T. (Deputy Tahsildar) or Deputy Mandal Revenue Officer who prepared the Notice (order) under Section 6 of the Act as per the direction of the third respondent, seems to have just complied with the direction issued by the Collector to take over possession, and that order prepared by the Dy. Tahsildar or Dy.M.R.O. was mechanically approved by the third respondent. So, it is clear that the order under Section 6 of the Act, prepared in the name of the third respondent, and impugned in this petition was not really the order passed by the third respondent, but was prepared by his subordinate officer (i.e. Dy.M.R.O.) strictly in compliance with the directions issued by his superior officer (the Collector). For that reason and for the reason that none of the contentions of the petitioner and none of the documents enclosed to the explanation submitted by the petitioner to the notice under Section 7 of the Act, were considered while passing the order under Section 6 of the Act, the same is liable to be set aside.

14. All the above apart, the contents of the order under Section 6 of the Act, passed in the name of the third respondent and impugned in this petition, show that same was passed on some assumptions, without any basis therefor. The said order reads-

> "As per the Town Survey Record, the said property admeasuring 4678 Sq.Mtrs., falls in T.S.No.19, Ward:54, Block-L of Gaganmahal Village and recorded as G.Abadi (Govt.Abadi). The land situated in prime area in heart of the city and the land can be used for public purpose for construction of office building of any Department for Hyderabad District. As such the encroachment of the land is objectionable. Therefore the request of the said Trust cannot be considered for continuous encroachment." (underlining mine)

In its reply/explanation to the notice under Section 7 of the Act, petitioner did not make a request for continuance of its alleged encroachment. On the other hand, it asserted its title to the suit land, and questioned the authority of the 3rd respondent to issue the notice under Section 7 of the Act, by producing copies of registered sale deeds, Trust Deed etc. Obviously, in as much as the third respondent, and the subordinates in his office, just wanted to comply with the directions issued by the first respondent i.e. the Collector, who is their superior officer and is the head of the revenue administration in the District, directing them to take over possession of the suit land, order under Section 6 of the Act was prepared even without looking into the file. In **STATE OF UTTAR PRADESH v. MAHARAJA DHARMANDER PRASAD SINGH** it is held that an authority which has to take a decision, cannot permit its decision to be influenced by the direction of others, as it would amount to abdication and surrender of its discretion, and as such would not be the decision taken by it, exercising its discretion. The relevant portion of the judgment reads-

> "If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power of the power conferred upon the authority. De Smsith sums up the position thus:
>
> "THE relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes

are not, however, mutually exclusive."

If we apply the ratio in the above decision to the facts of this case it would be clear that the order under Section 6 of the Act, impugned in this petition, passed in the name of the third respondent, in fact is not his decision but is of either the Collector i.e., first respondent or his subordinate i.e. Dy. M.R.O. who actually prepared it basing on the orders issued by the first respondent and so the same is liable to be set aside.

15. In **MAHAVIR PERSHAD** case (7 supra) relied on by the learned Government Pleader, petitioner therein claimed to have purchased a building situated at Road No.11, Banjara Hills, Hyderabad, under a registered sale deed dated 18-07-1992. On 05.9.1992, the Mandal Revenue Officer, Shaik Pet Mandal, Hyderabad issued summons to the petitioner therein informing him that he is found to be in illegal possession of the Government land bearing T.S.No.4/part and that a Land Grabbing Case is being instituted under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982, and asked him to produce documentary evidence, like title deeds, to prove his ownership within 3 days, and had also sent a notice under Section 7 of the Act calling upon him to show cause as to why action should not be taken under Section 6 of the Act. Petitioner therein alleged that he sent replies on 23.9.1992 and 6.9.1993 giving particulars of the title to the property and in the second letter/explanation, he undertook to pay the amount determined by the Government towards cost of the land, if any portion of the land in his occupation is the property of the Government. The Collector by the proceedings dated
03-01-2004 rejected the request of the petitioner for regularization under G.O.Ms.No.508 dated 20.10.1995 read with G.O.Ms.No.972 dated 04.12.1998 and G.O.Ms.No.515 dated 19.4.2003. On 02.12.2003, the Mandal Revenue Officer issued a notice under Section 7 of the Land Encroachment Act calling upon the petitioner to show cause as to why he should not be evicted from the Government property in Survey No.403 of Shaikpet Village admeasuring 774 Sq.Mtrs., with RCC building. Petitioner submitted his explanation on 29.12.2003 contending that he purchased 940 square yards under registered sale deed that he has been paying all the property taxes and that there is abundant evidence to establish title over the

property and so action under the Act cannot be taken. The learned Judge referring to **Raidurg Co-operative House Building Society Ltd. v. Government of A.P.** and **R.Jayasimha Reddy v. Government of A.P.** where question whether in all cases the Government ought to seek a declaration of title in Civil Court when there is an allegation of possession for long years, held that when the person in possession expressly or impliedly accepts the title and ownership of the Government to the property, it is not necessary for the Government to file a suit, and since the Mandal Revenue Officer, Golkonda and thereafter Mandal Revenue Officer, Shaikpet initiated action in respect of the land in R.S.No.4/part corresponding to old Survey No.403 of Shaikpet village, and since petitioner therein purchased land in S.No.129/69 under registered sale deed dated 18.9.1992 from Dr.P.Neena Desai whose title in respect of 479 square yards towards southern side of Plot No.3A is not clear, it cannot be said that there is a bona fide dispute between the Government and the writ petitioner therein whose request in the representation dated 06-09-1993 to the District Collector, Hyderabad, to regularize his possession was rejected, the ratio in **THUMMALA KRISHNA RAO** case (1 supra) cannot be invoked by the petitioner therein when he has an effective alternative remedy of appeal under Section 10 of the Act. Since the facts in that case are entirely different from the facts of this case because petitioner in this case never admitted the title of the Government to any part of the land in its possession from 1968.

16. In **S.LINGAMAIAH** case (8 supra) relied on by the learned Government Pleader, petitioner therein filed a better affidavit, after the writ petition came up for hearing. The learned Judge pointed out the differences in the affidavit filed along with the writ petition and the stand taken by him in the better affidavit filed during the course of hearing in a tabular form. From that table it is seen that initially petitioner claimed himself to be the owner and possessor of Ac.1-20gts but in the better affidavit he took a stand that he is the owner and possessor of Ac.4-16gts. In the original affidavit he did not mention the status of his family but in the better affidavit he claimed that he belongs to Jogan family and that the then Tahsildar of H.E.H. the Nizam had granted patta to Smt. Sadamma Jogan. In the original affidavit he claimed that there was no dispute about the right, title and possession over the property, but in the better affidavit he stated that there were serious disputes and that claims originated right from the regime of H.E.H. the Nizam and now from the

Government of Andhra Pradesh. Taking into consideration the inconsistent pleas and the fact that petitioner therein admitted that there is a serious dispute with respect to his title to the land, and the fact that he did not send a reply to the notice under Section 7 of the Act, the learned Judge in para 37 (at Page 848) observed -

> "Indeed, the petitioner ought to have produced all the xerox copies of the documents, which he filed along with the better affidavit, before the Mandal Revenue Officer, to enable him to come to a conclusion whether or not the land belonged to him or the Government. But the petitioner, leave alone producing these documents before the Mandal Revenue Officer, has not even chosen to respond to the show-cause notice issued under Section 7 of the Land Encroachment Act, and kept quiet till the respondent-revenue authorities passed final orders for his summary eviction under Section 6 of the Land Encroachment Act, and eventually the respondent-revenue authorities even evicted the petitioner from the land in question. It is required to notice that the petitioner has neither challenged the final notice nor the consequential action of the respondent-revenue authorities in evicting him from the land in question. In that view of the matter, this writ petition, which is filed assailing the show cause notice is not only not maintainable, but is also liable to be dismissed having regard to the developments that have taken place subsequent to the filing of the writ petition, which have been stated above."

The facts in that case are entirely different from the facts of this case. The petitioner in this case, in fact, sent a reply to the notice under Section 7 of the Act and claimed that he and his predecessors-in-title have been in possession from several decades prior to the notice and enclosed copies of all the documents. So, the said decision is of no help to the respondents.

17. In **MEHERNOSH H. CHENOY** case (10 supra), the writ petition was filed seeking a direction to the respondent to initiate Land Acquisition Proceedings afresh by publishing the requisite Notifications and Declarations, for passing an award as per the provisions of the Land Acquisition Act, 1894, in respect of the land in SurveyNo.171 (old No.37) in Thokatta village. The Court having found that title to the land in respect of which petitioners are claiming compensation is a disputed question of fact, which cannot be decided in a writ petition, dismissed the petition. The said decision has no application to the facts of this case.

18. From the order passed by the 3rd respondent under Section 6 of the Act, impugned in this petition, it is seen that respondents are claiming that the suit land belongs to the Government only on the basis of the entries in T.S.L.R. and the notification under A.P. Survey and Boundaries Act, 1923. In para-20 of

HYDERABAD POTTERIES PVT. LTD. case (3 supra) the learned Judge observed-

> "A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purpose of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to the right, title and interest of the persons in the land. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land Act, 1971. It is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923."

In **SOGRA BEGUM** case (4 supra) it is held that entries in T.S.L.R. do not confer title.

19. Since the petitioner is claiming title to the suit land on the basis of registered documents, which prima facie show its and its predecessors-in-title's possession from over 50 years prior to the issuance of notice under Section 7 of the Act, and since respondents are claiming that the suit land belongs to the government only on the basis of entries in T.S.L.R., without producing any document to show that they asserted title of the government to the suit land at any time within 30 years of the date of issuance of notice under Section 7 of the Act to the petitioner either by issuing a notice under Section 7 of the Act, to the petitioner or any of its predecessors-in-title or to show that either the petitioner or any of its predecessors ever admitted the title of the government to the suit land, the ratio in **THUMMALA KRISHNA RAO** case (1 supra) applies to the facts of the case and so respondents cannot, by unilaterally deciding that the suit land belongs to government, serve a notice on the petitioner under Section 7 of the Act for summary eviction. Since the third respondent, in whose name the order under Section 6 of the Act was passed, did not apply his mind to the facts of the case, and did not even consider the reply of the petitioner to the notice under Section 7 of the Act, it is but an arbitrary and unjust order. When an action or order is arbitrary, and is against the law laid down by the apex Court, availability of alternate remedy would not come in the way of this Court exercising jurisdiction under Article 226 of the Constitution, more so when the facts and circumstances of the case patently disclose that respondents are bent on evicting the petitioner, its availing the remedy of appeal would but be an exercise in futility.

20. I am unable to agree with the contention of the learned Government Pleader that granting the prayer sought by the petitioner in the petition tantamounts to declaring the title of the petitioner to the suit land because the original relief sought by the petitioner is to quash the notice under Section 7 of the Act and the relief claimed by way of amendment is to set aside the order under Section 6 of the Act passed by the third respondent. By allowing the petition, notice and order issued and passed under Section 7 and Section 6 of the Act respectively only would be set aside. It is significant that O.S.No.2364 of 1997 was dismissed only because petitioner did not seek declaration of its title to the suit land as the learned Junior Civil Judge held-

> "When the government has claimed that the property belongs to the government, the plaintiff ought to have filed a suit for declaration of title. Instead of filing the same the plaintiff has filed suit for declaration notice as null and void. For deciding this issue this court should invariably look into the title of the plaintiff and as well as the title of the government. The present suit is not filed questioning Ex.A.4 notice on the ground that the first defendant has not followed the procedure contemplated in any Act. The only ground on which the plaintiff is claiming is title. The defendant have taken a plea in the written statement and also put a suggestion to PW1 that value of the property is more than Rs.80 lakhs at present. The plaintiff has not denied the said fact that shows the value of the property is more and beyond peculiarly (SIC) jurisdiction of this court. As such this court cannot decide the title of the plaintiff as it is barred by peculiar (SIC) jurisdiction."

Since Section 14 of the Act bars the jurisdiction of a Civil Court to decide the validity of any proceedings under the Act, except the question relating to title, the learned Junior Civil Judge dismissing the suit for injunction simplicitor, questioning the notice under Section 7 of the Act, cannot be said to be erroneous.

21. Petitioner's prayer in this petition cannot be rejected merely because it failed to disclose its filing a petition for restoration of the appeal A.S.No.387 of 2001 dismissed for default because, in the facts and circumstances of this case, it is clear that respondents are anxious to some how evict the petitioner from the suit land. Petitioner, who filed a suit under wrong advice, came to this Court questioning the notice under Section 7 of the Act. When Officers of the State act arbitrarily and against principles of natural justice the only remedy open to a citizen is by way of filing a petition under Article 226 of the Constitution. Since respondents issued the proceedings under Sections 7 and 6 of the Act without applying their mind and in

violation of the principles of natural justice, the lack of bona fides, if any, are on the part of the respondents, but not on the part of the petitioner, who is fighting the mighty state to protect its right. When it is not the case of respondents that any interim order is passed in the application for restoration of the A.S.No.387 of 2001, it cannot be said that petitioner by invoking the jurisdiction of this Court under Article 226 of the Constitution is sailing on two boats.

22. The next question relates to service of order under Section 6 of the Act. As per Section 7 of the Act notices under the Act have to be served as per the procedure contemplated in Section 25 of the A.P. Revenue Recovery Act, relevant portion of which reads-

> "Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent or by affixing a copy thereof on some conspicuous part of his last known residence or on some conspicuous part of the land about to be attached."

The endorsement on the order under Section 6 of the Act passed by 3rd respondent reads-

> "I along with MRI have proceeded to the premises bearing No.3-6-292, Himayathnagar, Hyderabad, for service of this order (Proceedings u/s 6 of LE Act, 1905) on M/s. Kishanchand Foundation Trust, rep. By its Chairman, Trustee Sri Mahesh Chand was not available on the spot and not residing except one Sri Md. Hafeez, Manager/watchman. Sri Md. Hafeez was asked to take this proceedings but he has refused to take the proceedings, as such I have affixed this proceedings copy on the main gate of the premises No.3-6-292, Himayathnagar, Hyderabad, in the following witnesses."

Since the address of the petitioner in the petition is given as

> "M/s. Kishan Chand Foundation Trust
>
> represented by its Chairman, Trustee Sri Mahesh Chand,
>
> No.3-6-292, Himayathnagar, Hyderabad."

fixing of notice on the main door, as per Section 25 of the Revenue Recovery Act, is a proper service and so I am unable to agree with the contention of the learned senior counsel for the petitioner that there is no proper service of the order under Section 6 of the Act. May be, since the order is said to have been pasted to the main door some body might have taken it away and petitioner may be not aware of the

said order.

23. The contention of respondents is that they took delivery of the suit land on 23/11/2004 i.e. within 3 days from the order dated 20-11-2004. When the order granted three days time for delivery of possession, taking over possession even before the expiry of the time granted is improper. For that reason, and for the reason that documents produced by the petitioner, like the telephone bills, electricity bills, etc., show that the suit land with servant quarters is still in possession of the petitioner, there is force in the contention of the learned senior counsel for the petitioner that taking over possession by respondents is only a paper transaction, and a make believe affair. Since some persons i.e. watchman and his family are living in the structure in the suit land, how they were evicted is not mentioned in the panchanama. That the structure in the suit land has the facilities of telephone and electricity is also evident from the documents produced by the petitioner. If the petitioner is not in possession they would not pay those bills. So, I deem that possession of the suit land is still with the petitioner. Even assuming that possession of the suit land was taken over, since I held that invocation of proceedings under the Act is improper, respondents are bound to put back the petitioner in possession of the suit land, illegally taken from it.

24. Before parting with the case, it should be stated that the observations made by me in this order are made only for the purpose of deciding the question whether respondents are right in taking recourse to the provisions of the Act for seeking eviction of the petitioner. Those observations are not to be treated as an expression of my opinion on the question of title of the petitioner over the suit land. If and when, any of the parties institute a suit for declaration of their title to the suit land, that suit has to be decided on the basis of the evidence to be adduced and not on the basis of any of the observations made by me in this order.

25. For the above reasons, W.P.M.P. No.9726 of 2005 and also the writ petition have to be and hence are allowed. Rule Nisi is made absolute. Accordingly, notice issued to the petitioner under Section 7 of the Act by the third respondent and the Order Under Section 6 of the Act prepared in the name of the third respondent

impugned in this petition are quashed. Parties are directed to bear their own costs.

(C.Y.Somayajulu, J.)

Date: 26/04/2005

Cvrk

Note: L.R. copy to be marked.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, The Twenty Sixth Day Of April Two Thousand And Five.

..... REGISTRAR

One Fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (for His Lordship's kind perusal)

To

1 The District Collector, Hyderabad Dist.

2 The Revenue Divisional Officer, Hyderabad.

3 Mandal Revenue Officer, Himayathnagar Mandal, Hyderabad.

4 2 copies to the Government Pleader for Revenue, High Court Buildings, Hyderabad. (OUT)

5 8 LR copies

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

7 The Secretary, A.P.Advocates' Association Library, High Court Buildings, Hyderabad.

8 Two CD copies.